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TESTIMONY OF THE PIPELINE SAFETY TRUST

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Presented by:

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FOR THE

**SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS
OF THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES**

HEARING ON

PIPES Act of 2016 Implementation: Oversight of Pipeline Safety Programs

June 21, 2018

Good morning Chairman Denham, ranking member Capuano, and members of the Committee. Thank you for inviting me to speak today on the important subject of pipeline safety. My name is Carl Weimer and I am the Executive Director of the Pipeline Safety Trust. I am also a member of the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Technical Hazardous Liquid Pipeline Safety Standard Committee.

The Pipeline Safety Trust came into being after a pipeline disaster that occurred nineteen years ago - the 1999 Olympic Pipeline tragedy in Bellingham, Washington that left three young people dead, wiped out every living thing in a beautiful salmon stream, and caused millions of dollars of economic disruption. While prosecuting that incident the U.S. Justice Department was so aghast at the way the pipeline company had operated and maintained their pipeline, and equally aghast at the lack of oversight from federal regulators, that they asked the federal courts to set aside money from the settlement of that case to create the Pipeline Safety Trust as an independent national watchdog organization over both the industry and the regulators. We have been trying to fulfill that vision ever since, but the increase in the number of significant incidents over the past decade, from causes well within an pipeline operators control, makes us sometimes question whether our message is being heard.

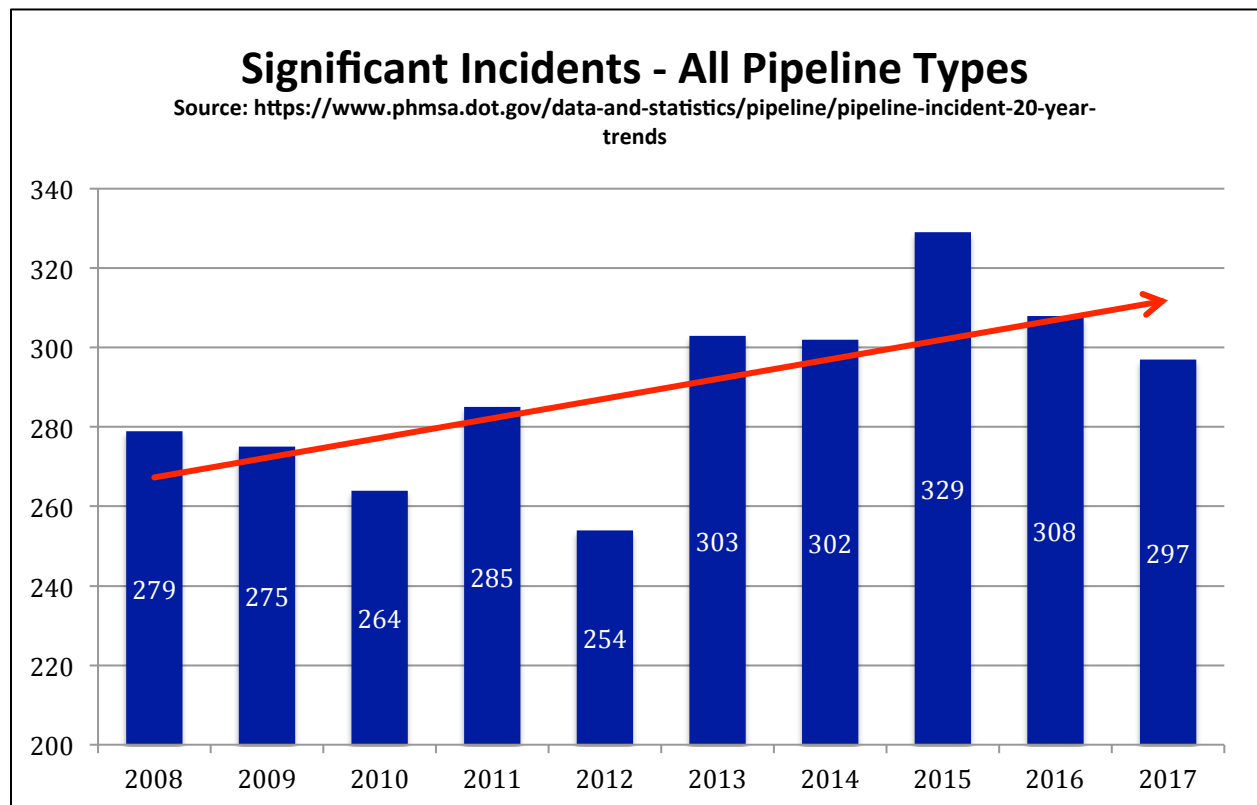
Today I would like to focus my testimony on:

- An overview of the safety of the current pipeline system in this country
- Issues external to PHMSA that impede improving safety
- The Following Sections of the PIPES Act of 2016
 - Sec. 3. Regulatory Updates
 - Sec. 4. Natural gas integrity management review
 - Sec. 5. Hazardous liquid integrity management review
 - Sec. 6. Technical Safety Standards Committees.
 - Sec. 10. Information-Sharing System.
 - Sec. 12. Underground gas storage facilities.
 - Sec. 19. Unusually Sensitive Areas.
 - Sec. 24. State Pipeline Safety Agreements.

Overview of the safety of the current pipeline system

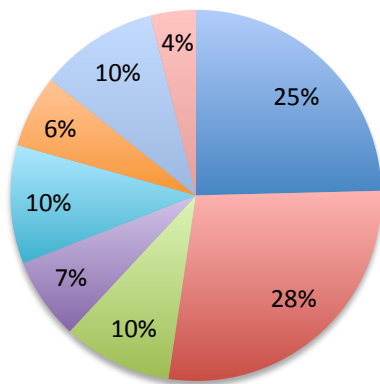
Before we get too far into the oversight of various pipeline safety programs I want to provide information regarding how well the current system is providing for safety.

While everyone testifying today supports the goal of zero incidents we still have a long way to go to reach that goal. According to data provided by the pipeline industry to PHMSA, in just the past two years, since the President signed the PIPES ACT of 2016, there have been 1186 reportable pipeline incidents. Of those incidents 544 are considered Significant Incidents under PHMSA's definitions. That amounts to an average of over 20 significant pipeline failures every month since PHMSA's pipeline safety program was last reauthorized. Even more concerning than the raw number of failures is that while we have all been saying the goal is zero incidents the number of significant incidents including all types of pipelines has been increasing over the past decade according to PHMSA data (See Graph below).

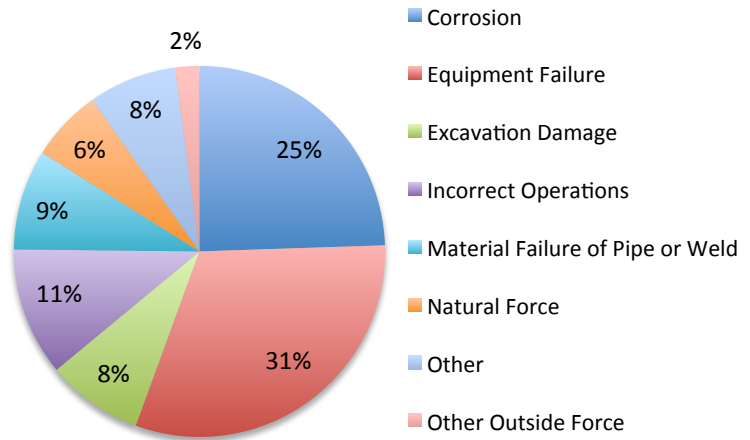


Also of concern is that for gas transmission and hazardous liquid pipelines over 70% of the failures since the last reauthorization are from causes the operators ought to have control over such as corrosion, incorrect operations, equipment failures, and problems with the materials they use and the welds they make. The pie charts below, generated from PHMSA data¹, demonstrates this problem.

**Causes of Significant Incidents on Gas Transmission & Gathering Pipelines
6/22/16 - 5/31/18**



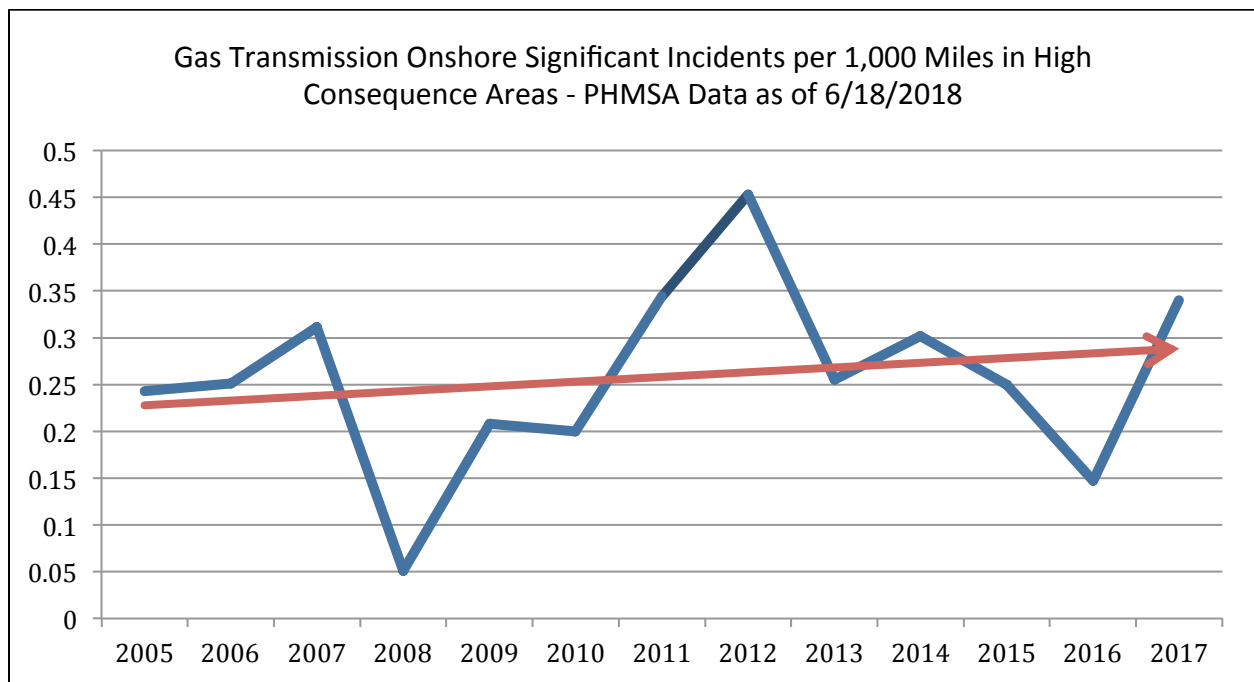
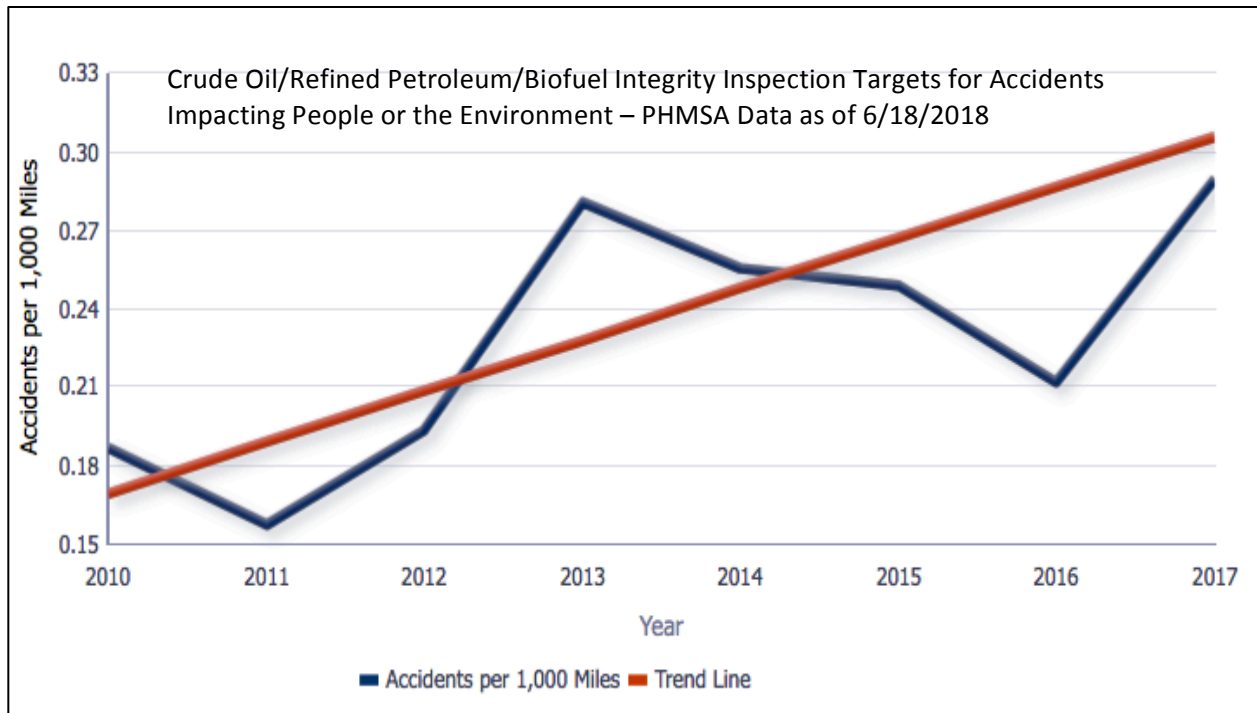
**Causes of Significant Incidents on Hazardous Liquid Pipelines
6/22/16 - 5/31/18**



Also of concerns is that for the past fifteen years much of the emphasis in reducing pipeline incidents has been focused on Integrity Management efforts in High Consequence Areas. The theory behind Integrity Management programs makes perfect sense – focus efforts in those areas where the most harm to people and the environment may occur, work hard to identify the risks in those areas, put into place programs to test for and mitigate those risks, and implement a continuous improvement program to drive down the number of failures. Unfortunately for hazardous liquid pipelines and gas transmission pipelines it would appear that these integrity management programs have not yet lived up to their promise as incident rates within High Consequence Areas continue to climb. The following two graphs, generated

¹ <https://www.phmsa.dot.gov/data-and-statistics/pipeline/pipeline-incident-20-year-trends>

from PHMSA's National Pipeline Performance Measures², demonstrate this concern with current integrity management programs.



² <https://www.phmsa.dot.gov/data-and-statistics/pipeline/national-pipeline-performance-measures>

Issues external to PHMSA that impede improving safety

Often in these hearings on the oversight of pipeline safety programs the focus is on how PHMSA has failed to implement various mandates, moved too slowly on regulatory initiatives, not provided information to the public in a timely manner, or even lacks the will to make the pipelines in this country safer. While we agree that those things are all important and fair game at such hearings, and we will touch on some of those issues again today, we would like to include in our testimony today how the pipeline safety system that Congress has created also has much to do with PHMSA's inability to get things done. PHMSA can only adopt regulations to implement the statutes that Congress has enacted, and there are many things in the statutes that could be changed to help remove unnecessary barriers to more effective and efficient pipeline safety.

One barrier to getting to zero pipeline incidents is the cost versus benefit analysis that both Congress and various Administrations have required new pipeline safety regulations to meet. While the analysis required from Congress under 49 USC § 60102 does not state that the benefit of new regulations has to outweigh the cost that is often how the industry and PHMSA views these requirements. The estimated costs of new regulations, mainly being derived from information provided by the industry, are often viewed under a very expansive and broad lens, whereas the benefits are looked at in a relatively narrow view. With this sort of system you can see that trying to require new technologies, retrofits, pipeline replacements, or even better reporting requirements across 2.7 million miles of pipelines, where the chance of an incident happening along any particular section of pipeline is extremely small, makes it nearly impossible to justify such safety improvements under this cost versus benefit system. If we are all really serious about getting to zero incidents then this system needs to be changed and we would encourage you to make clear that the requirements in 49 USC § 60102 do not require the Secretary to find that the benefits outweigh the costs if the proposed regulatory changes are important to move this nation's pipeline safety system toward zero incidents. We also hope you will work with the Administration to relax the cost versus benefit requirements in Executive Orders³ so we can get to our shared goal of zero incidents and move new regulations forward in a more efficient and timely manner.

³ <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>

There are also requirements in the statutes giving priority for the use of industry-developed standards in the regulations.⁴ To their credit, the industry is very good at recognizing problem areas in the pipeline safety system and getting ahead of possible regulatory fixes to those problems by developing new voluntary standards and recommended practices. These voluntary standards and recommended practices are nearly always developed by committees dominated by industry members, and few that have ever participated in these committees would claim that the outcome is what is the best or safest way forward, but more likely the best a diverse group of industry folks could come to agreement on. These voluntary standards and recommended practices are often then incorporated into the regulations without a full and open public development process that would have been used if the agency developed the standards themselves.

Often the industry will argue that regulations are “one size fits all” and lack the flexibility to allow the industry to use the parts that may apply to them, but ignore parts that don’t. They will argue that the implementation of their own industry-developed voluntary standards and recommended practices, without incorporating them into the regulations, is more cost effective and ultimately may be safer by allowing them the flexibility to focus their limited resources on the highest risks. The industry associations will often talk about the efforts they undertake to get their members to adopt these voluntary standards and recommended practices, and tout the high percentage of their member companies that have adopted various standards.

Unfortunately there are two problems with this system. First, without being a regulation with an independent inspection process, there is no way to know how well or to what extent various companies have implemented these best practices or any clear way to track whether implementation is really reducing incidents. We have no doubt that some good pipeline operators adopt these standards and use best practices to drive down incidents, but how well is the industry as a whole using them? The incident data provided above seems to indicate that not enough companies are doing enough. Secondly, while perhaps a high percentage of companies that are members of the major industry associations may use these recommended

⁴ Section 12(d) of the National Technology Transfer Act of 1995

practices, what about all the other pipeline operators? According to PHMSA's data⁵ there are currently 1113 active gas transmission pipeline operators and 526 active hazardous liquid pipeline operators, yet INGAA only has 27 members, and AOPL only has 53 members. While some parent companies may operate multiple pipelines, that still leaves hundreds of pipeline operators that are not members of these associations, so do not receive the ongoing encouragement and tracking that member companies do. If Congress and PHMSA agrees with the pipeline industry that such voluntary standards and recommended practices are a cost effective way to move toward zero incidents, then some sort of basic verification system needs to be built into these efforts to show that operators are really using them, using them correctly, and that these efforts are having a positive impact on safety. Some progressive operators and industries already have a system that requires third party verification of the effectiveness of these voluntary efforts where aggregated data is shared with the public to demonstrate continual improvement towards reducing risk. Congress should encourage the industry associations to develop such a system and to ensure that any company claiming to use their voluntary safety standards is part of it.

Review of the PIPES Act of 2016 Implementation

Little in the PIPES Act required clear changes to the pipeline safety regulations. Instead much of the emphasis was toward asking PHMSA, the Inspector General, or the GAO to do various reports or studies to make recommendations for potential next safety steps. Most of these reports and studies have been produced on time, although sometimes in less than a comprehensive manner. Some of the most important reports have yet to be produced because of the slowness of pending regulations. Below we talk about the sections we had the most interest in.

SEC. 3. Regulatory Updates

Section 3 of the PIPES Act required PHMSA to report on a publicly available website on a regular basis the status of their rulemaking efforts. We supported this reporting requirement to hold PHMSA accountable and to make clear to the public and Congress where these various rulemaking efforts are at. We believe that PHMSA has met the letter of these requirements, yet

⁵ <https://primis.phmsa.dot.gov/comm/reports/operator/Operatorlist.html>

clearly the status portrayed on PHMSA's Legislative Mandate page⁶ does not portray the true tortured nature of some of these rulemaking efforts. For instance, the large rule meant to improve the safety of this country's onshore hazardous liquid pipelines was started in 2010 nearly 8 years ago, but that fact is not clear on the page. What is also not mentioned on the page is how many times the rule bounced back and forth between PHMSA and OMB, with OMB's reviews under the previous Administration being responsible for a good deal of the delay in getting this rule to conclusion. What also is not mentioned is that even though this rule was agreed to by every party involved through the congressionally mandated PHMSA Liquid Pipeline Advisory Committee process, and was ready for a final publication in the Federal Register, the current Administration put a hold on it in January of 2017 for concerns yet to be stated. The PHMSA page required under Section 3 of the PIPES Act now says it may finally get published in September of this year. We are not holding our breath, and we would suggest if the Committee is concerned with the slowness of implementation of Congressional mandates that a witness from OMB be included in future hearings. We also suggest, to get a better idea where the delay in rules is actually occurring, that PHMSA's rulemaking chart include the date the rulemaking was begun, and for how long PHMSA, OST, and OMB each had the rule in their possession. **While this important rule has languished for a variety of process reasons since 2010 there have been over 3000 reported incidents on hazardous liquid pipelines spilling over 25 million gallons of hazardous liquids into the environment.**

In the current rulemaking on hazardous liquid pipelines that has been 8 years in the making PHMSA has identified a number of important initiatives regarding the identification of High Consequence Areas, leak detection, valve placement, automated valves, and integrity verification that have not been addressed in that current proposed rule, but have been put off to "future" rulemakings. The current regulatory effort on gas transmission and gathering pipelines, which has been in process for nearly 7 years – often referred to by industry as the "mega" rule – has now been broken up into three separate rules to be enacted in a phased approach. Such a phased approach makes it more difficult for certain portions to meet the cost benefit hurdle, and we fear those parts originally embraced by a majority of the members of

⁶ <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/legislative-mandates/16626/updates-pipes-act-website-chart-04-26-2018.pdf>

the Gas Technical Advisory Committee may fall by the wayside. We hope that Congress will soon refocus from efforts to streamline industry's abilities to build new energy infrastructure to streamlining the development and implementation of new rules that have been identified by the NTSB, PHMSA, the GAO, the industry itself, and the public as necessary to ensure the safety of such infrastructure.

Sec. 4. Natural gas integrity management review, and Sec. 5. Hazardous liquid integrity management review.

In sections 4 and 5 of the PIPES Act Congress asked the GAO to produce important reports on the integrity management program for both natural gas and hazardous liquid pipeline. To our knowledge neither report has yet been drafted since the directive in the PIPES Act asked for these reports "Not later than 18 months" after the large new gas and hazardous liquid final rules are published in the Federal Register. Since those rules have yet to be published, and may still be delayed for months or years, these important reports are not yet due. The current Integrity Management rules have been in place for over a decade and the proposed new rules have little in them that will produce major changes within 18 months of being published (especially since many new rules are phased in and do not take effect upon publication), so we ask that Congress direct GAO to produce these important reports as soon as is practicable instead of waiting for the proposed rules.

Sec. 6. Technical Safety Standards Committees.

We supported Section 6 of the PIPES Act particularly the part that requires the Secretary to fill vacancies of the Technical Advisory Committees in a timely manner. Often in the past there were vacancies for extended periods of time, but we believe the Secretary has met this obligation in recent years.

Sec. 10. Information-Sharing System.

The Secretary formed the Voluntary Information-Sharing (VIS) Working Group within the timeframe called for in the PIPES Act, and that working group has formed multiple sub-groups and met many times to hear other examples of successful information sharing in other industries. We look forward to their recommendations scheduled for the end of this year. We

hope this Committee will review the findings of the VIS Working Group in preparation for the forthcoming reauthorization of the pipeline safety program, and at that time make sure PHMSA has plans to implement the recommendations. We also ask that you ensure some platform that allows the public to understand and get summary information about these valuable information sharing efforts, without undermining the confidential and proprietary nature of some of this information.

Sec. 12. Underground Natural Gas Storage

In response to the Aliso Canyon storage facility leaks in Southern California as well as other gas storage incidents, Congress included in the PIPES act a mandate that PHMSA issue minimum federal safety standards for natural gas storage facilities within two years of the passage of the PIPES act of 2016. There are still no final standards in place. PHMSA issued an interim final rule (IFR) in December 2016, effective in January of 2017, with comments due on the interim rule in February of 2017. That interim rule was essentially an incorporation by reference of two industry-developed recommended practices. Yet in January of 2017, a group of industry organizations filed a petition for reconsideration of the interim final rule, unhappy that PHMSA had altered the language of the recommended practices to make some provisions mandatory rather than leaving them to the discretion of the operator. In June 2017, PHMSA issued a notice that it was considering the petition for reconsideration and additional comments on the petition, and in the meanwhile *and for an additional period of at least one year after a final rule is issued*, would not issue any enforcement citations on provisions of the rule that made discretionary provisions of the industry standards into mandatory rules that provided an option for operators to deviate from the rules as long as they justified the deviations. Further, PHMSA announced it would not issue enforcement citations against operators who failed to provide those justifications for their deviations from those same provisions, for the same period of at least one year after the issuance of a final rule.

In that June 2017 notice, PHMSA indicated that a final rule, taking into account the comments on the interim rule, the petition for reconsideration and the comments on it, would be issued by January 2018. No final rule or decision on the petition for reconsideration has yet been issued, so we remain at least a year away from enforceable mandatory minimum safety

standards for these facilities. As Congressman Brad Sherman, a resident of the community where the Aliso Canyon failure occurred noted in his letter to PHMSA, that failure demonstrates that "a lack of federal standards for underground natural gas storage facilities can have disastrous consequences." We join him in "urging PHMSA to draft a final rule that contains protections at least as strong as those contained in the IFR."

Sec. 19. Unusually sensitive areas.

Part of the definition of what is and is not considered to be a High Consequence Area for hazardous liquid pipelines is whether a pipeline failure could impact an Unusually Sensitive Area. In the PIPES Act of 2016 Congress directed PHMSA to make it clear that the Great Lakes, coastal beaches and marine coastal waters are considered as Unusually Sensitive Areas. This directive is yet to be accomplished. The need to do this came as a surprise to us and many other public interest organizations since clearly these areas are unusually sensitive. We were surprised to learn that due to definitions used and narrow interpretations of those definitions that many of these areas were not being considered are unusually sensitive, and therefore were not being used for determining High Consequence Areas that would require greater scrutiny under Integrity Management requirements. We were also surprised to learn that PHMSA does not currently have an easy way to define and map all such Unusually Sensitive Areas, and that many of the databases used when the Integrity Management programs were being developed over a decade ago are not functional ways to define such areas. This makes us question how accurately pipeline companies are defining such areas, and how PHMSA can enforce these regulations. With it becoming increasingly apparent that PHMSA lacks the knowledge to define these areas it again is clear to us that many other federal agencies and state and local governments use such definitions all the time, and should be called upon to identify Unusually Sensitive Areas in their jurisdictions. To date PHMSA has never asked state and local agencies to review or verify that Unusually Sensitive Areas within their jurisdictions are accurately identified. We ask that in the upcoming reauthorization of the pipeline safety program that Congress direct PHMSA to show how such Unusually Sensitive Areas are being mapped and identified, and set up a system so local and state governments that deal with these issues in their jurisdictions all the time at least have an opportunity to review and comment on such designations.

Sec. 24. State Pipeline Safety Agreements.

The GAO recently produced the required report entitled Interstate Pipeline Inspections⁷, which confirmed what we have believed all along, that “State involvement in interstate pipeline inspections can enhance oversight.” While we agree with the recommendation of the report that better planning on PHMSA’s part could enhance safety, we think GAO missed a huge opportunity by not considering the safety enhancements that could be made by allowing states operating under PHMSA interstate approvals to also regulate interstate pipelines within their states in ways that exceed the minimum federal requirements. There is a reason these rules are referred to as the MINIMUM requirements and as NAPS and NARUC have demonstrated in their Compendium of State Pipeline Safety Initiatives and Requirements Providing Increased Public Safety compared to Code of Federal Regulations⁸ there are many ways to exceed these minimums that provide for greater safety. The Compendium shows that as of 2013 states have enacted 1361 rules and initiatives that go beyond the federal minimums for intrastate pipelines to increase safety on the pipeline they oversee. There is no reason that many of these same enhancements could not also apply to interstate pipelines as long as they do not conflict with PHMSA minimum rules, and if state regulators are willing to draft and enforce them freeing up PHMSA for other responsibilities.

I thank you for the opportunity to provide this testimony today, and as always I am available to answer any additional questions you might have and to work with you further as the reauthorization of the national pipeline safety program approaches.

⁷ <https://www.gao.gov/assets/700/692059.pdf>

⁸ <http://www.napsr.org/compendium.html>